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ABSTRACT

A theoretical framework for evaluating the twenty-five year experience of social reform groups and law reform lawyers is presented in this paper. Law reform organizations participate in activities that have common, underlying themes. For instance, in most cases the lawyers want more of society's goods for the clients. In order to evaluate whether law reform activities are successful or not, five variables of a theory that would explain success in reform group law and reform activities are identified. Among these are the following two: (1) the characteristics of social reform groups, and (2) the distribution of the benefits and costs of social reform group activity. A series of case studies are provided in order to illustrate a different type of social reform legal activity. They were selected from four principal areas of law reform activity: environmental litigation, consumer issues, civil rights, and welfare. The theory presented predicts where law reform activity on behalf of social reform groups is less likely to be successful. (Author/AM)

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Joel F. Handler

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SOCIAL REFORM GROUPS AND LAW REFORMERS

By Joel F. Handler*

Americans have always resorted to the courts to challenge the action of government, but only during the last two decades has the use of litigation as an instrument of social reform become so widespread that we could call it a movement. Most notable was the work of civil rights groups, particularly the litigation activities of the NAACP, and the NAACP Legal Defense and Education Fund, Inc. (The Inc. Fund). Brown v. Board of Education[1] (the school desegregation case) came at the outset of the Warren Court--a period of judicial activism during which the federal courts opened their doors to the claims of the disenfranchised and minorities in American society.[2]

The apparent successes in civil rights litigation and the receptivity of the Supreme Court and the lower federal courts encouraged other groups and organizations to adopt a law reform strategy. In the late 1960s, OEO Legal Services pushed law reform (test case litigation) as a strategy to help eliminate poverty. Ralph Nader emphasized law, if not litigation, as an instrument of social change. Nader used publicity, reports, and exposure, in an attempt to force agencies to carry out laws already on the books, and to get legislatures to enact new laws. The latest development, starting about 1970, was the foundation-supported "public interest" law firm. Public interest law firms are known primarily for representing environmentalists and consumers, but in fact, they also represent many other interests--the physically and mentally ill, children, women, juveniles, TV listeners, and so forth.[3]

During the last twenty-five years, then, we have witnessed three interrelated phenomena. There was a long period of judicial activism which stimulated and encouraged the use of litigation as a tool of social reform. There was a growth of client groups turning to lawyers and the courts. At first the most prominent groups were blacks, later joined by other minorities; then, there were the poor, followed by environmentalists, consumers, women, and a whole range of others. And there was a rise in lawyer organizations interested in law reform, test-case litigation which attracted a steady stream of professional recruits.

In this paper, we set forth a theoretical framework for evaluating the twenty-five year experience of social reform groups and law reform lawyers. What were the law reformers and their clients trying to do? What was their theory as to what was wrong with society, and what was their prescription for change? Under what circumstances did law reformers succeed or fail in their efforts?

Part I. The Theory of the Law Reformers

Despite diversity among law reform organizations, one can identify in their activities certain common, underlying themes. For the most part, the lawyers want more of society's goods for their clients. Often they justify their work in terms of procedural justice, but substantive goals are far more important. Inc. Fund lawyers are committed to blacks; OEO Legal Services lawyers to the poor; public interest lawyers to preserving the environment, or protecting consumers, or other groups and interests. Lawyers in law reform organizations are social reformers interested in tangible benefits for their clients, they differ from other social reformers or political

entrepreneurs only in that they happen to be lawyers using their professional skills.

The principle method which these reformers use is advocacy--they wish to alter the adversary system in order to strengthen its capacity to suit their needs and desires. Redistributions of values will be obtained through representation in court of groups and interests, who, they feel, have been unrepresented or underrepresented. But advocacy is not restricted to courts; it takes place wherever important decisions are made affecting the interests of client groups--in all branches and levels of government--legislative and executive--in the media, in the private sector. Other themes in law reform activity are consciousness-raising and legitimization. The legal system is used as a vehicle to make clients and the wider community aware of goals and issues; court decisions, statutes, and administrative rules legitimate the values of the law reformers and their clients.[4]

Most of the activity of the law reform lawyers is directed against the government. Test-case litigation and other forms of advocacy representation seek to make the state live up to its promises by enforcing laws already on the books. These tactics also aim at a balance in the flow of information so that agencies exercising discretionary power will modify their view of the "public interest," in the direction of the definitions the lawyers advocate.

Underlying these efforts at strengthening the adversary system, and reforming government is the basic assumption that values will be redistributed to social reform groups through the revitalization of pluralism. The law reform lawyers accept the pluralist interpretaiton of American government, are aware of the shortcomings of pluralism, and seek to remedy these shortcomings.

The core of pluralist thought is that society is composed of many interest groups (including government) and that the public interest is served through the competition of the various groups. Society is diverse; hence, groups arise to represent various interests. Pluralists believe that as long as there are many competing groups, government will not be controlled by any one interest. The pluralist model is one of stability and equilibrium. Overlapping membership as well as the potential for the rise of opposition groups tends to modify demands; there is always the potential for countervailing power. Groups constantly try to stabilize internal and external relations.

Critics of pluralism argue that interest groups have been taken into partnership with government and become "institutionized." Instead of competition among groups vying for government benefits, there is consensus politics; government deals with the most powerful, best organized interests in society, and tends to sanction and support bargains already struck, thus further strengthening the entrenched groups. The partnership system fails to take account of unarticulated interests or weak and poorly organized groups. The present system, instead of fostering change, cumulates benefits and advantages for elites and perpetuates the status quo.[5]

There are a number of ways to remedy institutionized pluralism, but law reformers choose to use the legal system to strengthen the position of weak, poorly organized, or unarticulated interests in society. As Ralph Nader put it, "A primary goal of our work is to build countervailing forces on behalf of citizens. . . . Must not a just legal system accord victims the power to help themselves, and deter those forces which victimize them?"[6]

The prescription of the law reformers is to make pluralism work by strengthening the "out" groups.

The law reform strategy intends to increase the power of the client groups. Why have these groups been so powerless? And how can law reformers change the situation? To answer these questions, we will look first at characteristics of the groups themselves. Then, we must look at characteristics of the law reformers. Why do they take certain kinds of actions but not others? How appropriate are their actions in light of the needs and problems of their clients? As we shall see, the law reformers are litigation-oriented, but how much can courts really accomplish? Finally, we must consider what we mean by success. How do we evaluate whether law reform activity is successful or not?

Part II. Toward A Theory of Social Reform Group Law Reform Activity: The Determinates of Success

In this part, we try to identify the variables of a theory that would explain success in reform group law reform activity. There are five of these variables: 1) the characteristics of social reform groups; 2) the distribution of the benefits and costs of social reform group activity; 3) the nature of the bureaucratic contingency confronting the social reform group; 4) characteristics of judicial remedies; and 5) characteristics of the law reformers. First, we will discuss the characteristics of each of the variables; then, we will specify the relationships.

A. Characteristics of Social Reform Groups

Social scientists have expressed various views about the nature, structure, and efficacy of social reform groups. A common assumption has been that

people with mutual intersts join together to further those interests since all members of the group are better off acting together. Group action is rational, self-interested behavior on the part of individuals. Mancur Olson, Jr. has challenged this assumption. In his view, unless the group is small, or coercive, rational, self-interested individuals will not join together to achieve common interests.[7]

The key to Olson's analysis is the distinction between collective and selective goods, and the concept of the free rider. Collective goods or public goods are goods that any member of a group can consume even if he has not paid any of the cost of producing the goods. A consumer who does not pay is called a "free rider." As rational, self-interested individuals, there is no economic reason why they should pay for the cost of producing the good when they can enjoy the good free. Olson uses as an example, factory working conditions. Any one individual worker would not pay union dues unless forced to by a union shop since he will enjoy the benefits of good working conditions, negotiated by the union,whether he pays any dues or not.

Olson's free rider analysis applies to large groups where each individual's potential contribution does not determine whether the collective good will be produced or not. If the group is sufficiently small, each individual's contribution will make a difference, and he will contribute so long as the benefits of receiving the collective good outweigh the costs.[8] Collective goods will also be supplied in a large group if it contains within it an hierarchical organization (i.e., small subgroups) and the leaders obtain either a disproportionate share of the collective good or additional, selective goods, such as salaries or side payments. In either case, the leaders will continue to pay for the cost of producing the collective good only as long

as the benefits exceed the cost. Olson argues that the larger the group, the more unlikely that a small, subgroup would be willing to pay for the costs of supplying the collective good. A third reason why large groups have difficulty in organizing to provide collective goods is that organizing has high costs ("resource" or "transaction" costs), which, of course, will vary with the size of the group.

Olson's theory is important for our analysis because most of the social reform groups that we will be discussing have a large, dispersed membership; they seek collective goods (environmental amenities, safe products, school desegregation); and appear to be highly vulnerable to the free rider problem. Thus, according to Olson, these groups have the least chance of success in organizing and achieving their goals.[9]

Olson's analysis rests on assumptions about individual economic choices. Other social scientists point out that, in a sense, Olson proves too much. After all, reform groups do exist. How can we explain them if Olson is correct? McCarthy and Zald provide one approach.[10] They point out that some organizations which they call "funded social movement organizations," use outside (nonmembership) support. Many of these develop a professional full-time staff. Their distinguishing feature is that the professional leadership does not have to depend on a mass membership for financial support. Leaders of such organizations use the mass media to attract members, gather support, and to influence elites. The size and activity of these organizations may depend more on media coverage than on the size of the membership, the intensity of their feelings or the nature of their grievances. Many of these organizations raise money by mail solicitation; they require nothing else for membership. Dues may be small, and as they pour in, the leaders, who are full time,

can claim to "speak" for a lay constituency that may actually be only moderately interested in the cause.

Although leaders of funded social movements are free from dependence on members, they are dependent on outside contributors--what McCarthy and Zald call "contributing beneficiaries"--donors who participate by paying for the collective goods but do not consume them. The task of the leaders is to persuade these donors to contribute and funding tends to be highly unstable. In many of these organizations, most who contribute do not directly experience the grievances of the group; their relationship is tenuous and they have other choices and demands for their money.

As we shall see, several of the social reform groups that we will discuss are organizations of the type McCarthy and Zald have mentioned. They have large paper memberships. Their leaders use the media to attract outside support from elites and contributing beneficiaries. Of particular interest to us will be the use of law as a publicity and legitimating device in attracting this support.

James Q. Wilson has also discussed the problem of incentives for joining organizations.[11] Material incentives are important, of course, in attracting members. But Wilson points out that if the organization only has material incentives, additional benefits are needed to induce members to perform new tasks. Wilson thinks that there are special difficulties in organizing lower social classes because of the importance of material incentives; they are the closest to Olson's rational, economic person. Many people join organizations for reasons of solidarity--charities, fraternal, religious, and ethnic organizations. People join purposive organizations for a sense of satisfaction--the benefits go to the larger society rather than to the joiner (e.g., an organization to abolish the death penalty). Wilson thinks that leaders have difficulties in maintaining purposive

organizations if for no other reason than that the organizations rarely attain their goals. Some purposive organizations become staff led, or, in McCarthy and Zald's terms, funded social movements. Most of the social reform groups in our analysis are purposive groups, or are lower social class groups that rely on material incentives.

Wilson emphasizes the limited role that social reform groups have in effectuating social change. He argues that major new policies of government come about through broad changes in public opinion usually caused by dramatic events (wars, depressions, etc), extraordinary leadership, or the accumulation of ideas filtered through the media. Changes are also accomplished by political entrepreneurs, who engineer a program. Once established, a program gets a client association, and it is very difficult, if not impossible, to abandon the program. Organizations can aid the process of social change by putting ideas on the national agenda, but organizations cannot bring about such changes on their own. The mobilization of public opinion and professional resources, publicity, and legitimacy can be important contributors to the work of other agents and factors producing social change or preserving gains previously won. Claims differ in their potential for political mobilization and in their ability to attract allies. Because social reform groups have to work with other forces in society, the goals and issues that they select have to be in tune with goals and interests of other actors for social change.

B. The Distribution of Benefits and Costs of Social Reform Group Activity

The ways in which benefits and costs are distributed also help to predict whether organizational activity will be successful according to Wilson. Where benefits and costs are widely distributed (for example, in social security),

programs become institutionalized quickly and benefits increase without a great deal of organizational activity. These programs are enacted by political entrepreneurs or as the result of dramatic events. Because of the wide distribution of benefits and costs, it is difficult to mount successful organized activity either for or against the program. The cost to each taxpayer is so small, that, in effect, efforts to curtail these programs become purposive rather than a matter of economic self-interest. Benefits are so widely distributed that they are almost like collective goods; beneficiaries will enjoy the benefits, and contribute a little to their retention or growth, but not a great deal. Political scientists, such as Wilson, point to the steady rise of these broadly based social welfare programs. From time to time, there is budget cutting (for example, in education and welfare), but only on the edges, and often temporary at that.

In some programs, benefits are concentrated, and costs distributed--for example, tariffs, or subsidies for shipbuilding, or agricultural price supports. In these situations, beneficiary groups organize and form partnership arrangements with government. Opposition groups are weak either because of the free rider problem, or, if they are purposive organizations, they have no direct stake in the matter. These are the cases that critics cite as failures of pluralism to achieve the "public interest."[12]

Product safety and environmental programs are examples in which benefits are distributed and costs are concentrated. Opposition tends to become intense; consumer and environmental groups have difficulty in organizing because of the free rider problem and purposive incentives. On the other hand, many consumer and environmental programs have been enacted in recent years. According to Wilson, the enactment of these laws did not represent

organizational triumphs in particular; rather, they were usually the product of temporary coalitions. Sometimes they were aided by dramatic events, political entrepreneurs, the media, and organizations. Here, the problem of staying power becomes critical since the opposition groups have strong incentives (concentrated costs) to work to undermine the program.

Where both benefits and costs are concentrated, there is continuing struggle and negotiation. The example here is labor-management legislation.

Wilson's typology illustrates the congruence in the three theories of social reform groups, as well as the criticisms of pluralism. McCarthy and Zald's funded social movements are influential in getting programs on the national agenda and manipulating the media and elites. This aids purposive organizations and helps enact legislation. On the other hand, Olson's analysis of the applicability of the free rider problem is used by Wilson to explain his most important examples, the weakness of social reform groups where benefits are distributed but costs are concentrated. The introduction of noneconomic incentives and McCarthy and Zald's contributing beneficiaries refine and make more subtle Olson's analysis; they complicate and enrich the analysis, but they do not significantly weaken the major point. All theorists agree on the difficulties of the "out" groups to organize and stay organized to see programs enacted and implemented. In many of the examples that we will be discussing, social reform groups face difficulties either because of the distribution of the benefits and costs of their activity or because the groups are purposive. The two variables--the structural characteristics of the groups and the distribution of the benefits and costs of activity--interact; they are closely related and are major determinants of the success of social reform groups in gaining access to the political system.

C. The Bureaucratic Contingency

Most social reform group activity is directed at government. Groups seek to have existing laws enforced, or new laws enacted and enforced. This activity involves all levels of government, although the level that we are concerned with is that of the working bureaucracy. The challenge is to administrative rules or policies, and to their implementation (or lack of it) in the field. Getting a bureaucracy to obey an order is not always easy. It depends on the nature of the order, and the structure of the bureaucracy. In most cases, a negative order (for example, an injunction) does not present great difficulties; the bureaucracy is commanded to stop whatever it is doing, or planning to do. The directive is often unambiguous and easily monitored. Thus, if an environmental group can get a court order stopping a bulldozer, there is no great problem in enforcing the order.

Quite different are orders commanding a bureaucracy to take positive steps to change the way in which it performs its task. Many agencies are large, decentralized, and a great deal of discretion exists at the field level. Orders, to be effective, require obedience from far flung, independent agencies of government scattered about the country. The classic example is the school desegregation problem. It was extremely difficult to enforce the Brown decision, and even the particular court orders in various school districts in the south could not be easily brought into effect.[13] The police, welfare agencies, hospitals, mental institutions, and prisons are also hard to control for structural reasons, among others.

Problems of enforcement are also severe when affirmative orders deal with technically complex matters that require actions extending over a considerable period of time. These orders are seldom totally unambiguous.

Officials who are opposed to these have numerous opportunities for evasion. Monitoring requires skill and expertise, as well as staying power.

Visibility is another factor. Some agencies make large numbers of decisions--the Food and Drug Administration, the U.S. Forest Service, the FCC when renewing licenses, social benefit agencies, and criminal justice systems. It is often hard to keep up with what these agencies are doing, let alone change their behavior.

In most large agencies, the organizational chart gives a very imperfect picture of what actually goes on. Public agencies are massive, dense, complex organizations. They possess enormous discretion; neither management nor legislative nor policy-making organs of government can control them. Although agencies have often not been given clear substantive goals, we expect agencies to be accountable to political leaders, to deal in an equitable manner with their clients, to be efficient and responsive to clients who fall outside of the rules, and to maintain fiscal integrity. These goals conflict with each other. Within the organizations themselves, there are distinctive and often conflicting goals--goals of individuals, of the various units, of groups who have different sources of information, attitudes, expertise, and perceptions. Conflicting goals make it difficult to measure performance or to persuade others to change their behavior.[14] Superiors attempt to resolve these conflicts through bargaining, mediation, or adjudication rather than commands. The bargaining process extends throughout the organization; it extends to relations between clients of the organization and lower-level officials. In the continuous bargaining process that extends throughout the bureaucracy, rules are used as poker chips rather than as commands. Because lower-level officials have unique powers of controlling access to persons on whom the agency is

dependent, information, and physical resources, agencies "are, in a sense, continuously at the mercy of their lower participants."[15] In study after study, it has been demonstrated that the field level officials have within their power the ability to thwart or accept changes in administration.

Social reform groups and law reformers typically face an administrative process that consists of a series of decisions occurring over time; one-time isolated decisions are relatively rare. Decisions are made at various levels throughout the bureaucracy, although what happens at the field-level is usually decisive as to impact. Many decisions are technically complex, making it difficult to evaluate short- and long-term effects. For a reform strategy to be effective, then, it must have enough scope and depth to cover a broad range of administrative activity and to penetrate below the top level of management; it must have staying power in order to insure that initial changes are not subverted; it must have technical competence; and it must have a broad range of political skills. On the other hand, the fact that bureaucracies are large, complex and are arenas of internal political conflict often means that social reform groups, though attacking the organization, can find allies within the organization. Consumer and environmental organizations often receive sympathetic information from intermediate levels of agencies they are investigating or attacking. If the bureaucracy is divided over the issues confronting it, the problems faced by social reform groups are somewhat lessened.

D. Judicial Remedies

Law reformers and social reform groups have used litigation as a means of confronting bureaucracies. How much can litigation accomplish? Under what circumstances can it deal with the problems we are discussing? A period of judicial activism started in the mid-1950s, during which, the legal rules

opening courts to reformers greatly expanded. There were new statutory rights: but courts also made use of constitutional doctrines; the due process clause, for example, helped people who claimed welfare benefits, or who wanted employment tenure, or security of tenancy in low-income housing. Courts held that government could not take rights away or revoke privileges without holding hearings.[16] In reviewing administrative agency decisions, courts were less willing to defer to claims of agency expertise and discretion; they scrutinized more carefully the decision-making processes of the agencies. Courts also expanded the doctrine of standing--the rules governing what persons or groups could challenge government decisions either before the agencies or in court.[17] In the last few years, the U. S. Supreme Court has retreated somewhat from the doctrines created during the activist period, but the pendulum has not swung back very far. Compared to the situation prior to the 1950s, courts are available to hear many social reform claims that would have had no forum before this period.

Nevertheless, agencies can still thwart the will of the courts, and hence, that of social reform groups. We start with the premise that agencies are usually hostile to the claims of social reform groups. Agencies become sponsors and developers in partnership with the regulated clients; they want to carry on their program without interference from outsiders. When ordered to do otherwise, an agency will often do the absolute minimum needed to comply with the letter of the order.[18]

Bureaucratic hostility is important because, despite the availability of judicial remedies, social reform groups are still forced to seek relief first and foremost from the agencies. Only rarely can a claimant persuade a court to act against an agency before the claimant has first gone to the

agency. At its core, this attitude makes sense; agencies have primary responsibility for making and maintaining policy and it is disruptive for courts to intervene in matters that are committed to agency discretion, especially before the agency has had a chance to consider the matter. Therefore, unless the claimant can show that it will suffer irreparable harm and that it is hopeless (or virtually so) to go to the agency, the court will usually tell the claimant to go to the agency first. This deference has enormous practical consequences for social reform groups. They are subject to delays, complex administrative procedures, problems of mootness, and other difficulties in fighting through the decision-making processes of the agencies.[19]

After the agency has acted (or refused to act), judicial review is usually available. Yet, for a variety of reasons, judicial review may be an inadequate remedy. Many social reform group cases--particularly in matters of environmental and consumer protection--focus on procedures; they ask for a hearing or for the agency to consider additional factors in reaching its decision. "Victory", then, means that the claimants must return to the agency for a hearing. Even if the claimant can persuade an appellate court to overturn an administrative decision on the grounds that it was arbitrary and capricious, the court will rarely make a substantive decision itself. In matters committed to agency discretion, reviewing courts are very reluctant to substitute their judgments for the agencies.[20] Courts also consider themselves overburdened and, especially in technical and complex areas, would rather delegate substantive responsibility than handle much matters themselves.

Perhaps the most serious problem with judicial remedies has to do with enforcement. Traditionally courts tend to avoid regulatory or structural injunctions--those which seek to control or direct behavior over a long period of time or alter the relationship between people, groups, or institutions.

Under extreme situations, activist courts have reorganized voting districts, supervised the formulation and implementation of school desegregation and busing plans, and framed programs for patients in mental hospitals. But these are extraordinary situations. In the usual case, the court will not set up elaborate machinery to enforce its orders. It will rely on the parties to the lawsuit to follow-up.[21]

Monetary relief is also readily susceptible to monitoring, except where extensive calculations are required, or where small sums must be disbursed to large numbers of claimants, who lack the information and resources with which to pursue their claims (for example, welfare recipients, consumers entitled to refunds, taxpayers, etc.).

The judicial remedy, then, is most effective if the court can substitute its decision for the agency's, that is, if it need not defer to agency discretion, or can solve the matter for the social reform group by a preventive injunction, or, otherwise render a decision that is readily monitored (monetary orders, for example). A permanent injunction against a construction program satisfies all three tests. But this is not typical. Social reform groups will usually need remedies that call for administrative discretion, are long require lower-level implementation, and are technically complex.

E. Characteristics of Law Reform Lawyers[22]

The lawyers, who work for and with reform groups are another factor which affects the results of group activites. Lawyers offer professional skills, but subject to implicit and explicit conditions. The profession has its norms, ethics, and biases; the lawyers have career goals and aspirations, relationships with colleagues, and so forth. The relationship between lawyer and client varies enormously. Strong, rich, and confident clients direct their

lawyers; on the other hand, lawyers dominate the relationship when clients are poor, or deviant, or unsophisticated.

Law reform lawyers have a rather special relationship with their clients, different from the ordinary attorney-client relationship in private practice. The law reform lawyer attorney-client relationship is affected by the funding source, the size and resources of the office, and the characteristics of the staff, which bias the lawyers toward litigation. Let us take as an example, a public interest law firm with five to ten lawyers, working full time and completely supported by foundation grants.

These law firms deal in controversial questions with high stakes--the environment, product safety, discrimination, and so forth. The opponents do not take kindly to these lawsuits; they question the motivations of the lawyers and their sponsors, the propriety of public or foundation support for this work; and have not hesitated to complain vigorously in a variety of public and governmental forums. Law reformers and foundations feel the need for legitimation, especially legitimation from courts. One potent defense against political attack would be a favorable decision by a federal court of appeals since this would seem that the law reformers had acted properly, that their claims were justified in law.

A court decision has more public relations value than an administrative rule, a study, or a report. Law reformers have been trying to grow and become a movement; to do this, they have to become known. Publicity is also important in other ways. As McCarthy and Zald argue, leaders of weak or paper organizations must manipulate the media (and elites) to attract support. Court cases, particularly when they stop a bulldozer or unmask some outrageous practice, can be dramatic and newsworthy.

Moreover, law reform firms are almost exclusively composed of young lawyers. Their professional inclination is to litigate. This is what attracted them in the first place. Their models were lawyers who were successful in social reform group legal activity, especially in civil rights.

Contrast litigation with lobbying--another important technique that lawyers use on behalf of clients. The successful lobbyist is a person who stays with a key legislative committee or a government agency for years, slowly and quietly building the relationship, supplying information, and establishing confidence and mutual interests. A successful lobbyist gets a committee or agency to adopt his position sometimes without even any awareness that the lobbyist first brought the idea to the committee or agency's attention and worked for its adoption. It would be hard to imagine law reformers working in this way. Quiet lobbying lacks drama and legitimacy. In addition, the lawyers themselves are too young, too new on the job to do this kind of work, and probably lack the temperament and inclination.

On the other hand, though law reformers tend toward litigation, they cannot really afford long litigation that turns on complex factual matters. Neither they nor their clients can pay for the experts and related costs of such lawsuits. There is a dramatic contrast between the slender resources of these firms, and their opponents--large corporations represented by the largest law firms.

The survival needs and preferences of law reformers are different from those of private practitioners; and clients of law reformers usually lack the market power to pick and choose among lawyers. What are the characteristics then, of this attorney-client relationship? (1) Sometimes the lawyers, to be

initiative, think of a problem and contact the leaders of organizations they have dealt with before and get them to agree to the plans of the lawyers. The lawyers gain from the publicity; since they deal solely with the leaders they need expend little or no resources to persuade the membership. The leaders, in turn, have a free resource, an opportunity to gain publicity for themselves and the organization, and, the chance, through the legal system, to accomplish some of their goals. The lawsuit may not be a high priority item on their agenda, but the leaders are willing to go along because of the free or low-cost gains. This arrangement allows the law reformers a lot of flexibility in picking cases, selecting tactics and issues--maximum freedom to tailor litigation to the firm's wants and needs.

This kind of attorney-client relationship, of course, is by no means universal. Many client groups have an active membership and an articulate leadership, willing and able to direct and control the lawyers. Nevertheless, even these strong groups lack the power to the purse; they do not pay the lawyers, who thus, continue to operate more or less under their rules and constraints.

(2) Other law firms are organized by and from integrated subunits of parent organizations--such as the Sierra Club, Consumers Union, and Public Citizen (Ralph Nader). The parent groups use many techniques besides litigation (for example, lobbying and information dissemination). The lawyers have available to them the resources of the organization; and this may give them less of a bias toward the use of litigation exclusively.

(3) Some organizations make extensive use of networks of participating lawyers. The organizations have a central office with a full-time staff, but much of the work is generated and handled by lawyers in private practice, in various parts of the country. We would expect the litigation

bias to be strongest among the participating lawyers. They would tend to be zealots and less amenable to compromise, negotiation, or lobbying; they would be tied to local groups who would feel intensely about a particular issue. Participating lawyers and local groups would lack capacity except to litigate.

Law reformers, in short, often lack advocacy skills and other resources (besides litigation), which the reform groups need. In some situations, they can draw upon the resources of their clients. Law reformers are of most use if they can combine litigation skills with lobbying, political, and informational skills. They are of less use to social reform groups to the extent that they by choice or necessity have only litigation skills.

We have discussed five variables that (we think) affect the outcome of law reform activity on behalf of social reform groups. Our discussion of the variables is summarized in Chart 1. Next we turn to a difficult problem--the dependent variable. What do we mean by success?

F. The Dependent Variable--What is "Success"?

In evaluating effects, our starting point will be the stated objectives of social reform groups. We will be concerned primarily with groups that are seeking an actual redistribution of values. By redistribution of values we mean such things as better health, education, and welfare programs; this would include not only more resources but also better standards of administration. For consumer groups redistribution would mean safer and more economical products, and more information; for environmentalists, the preservation of wilderness areas, lower levels of pollution, the conservation of energy; for

CHART I

Variables which Predict Social Reform Group Outcomes of Law Reform

	Effective	Ineffective
A. Characteristics of Groups	small size outside funding availability of selective benefits	large size no outside resources collective goods only
B. Benefit-cost Distribution of Group Action	benefits concentrated; costs distributed benefits distributed; costs distributed	benefits distributed; costs concentrated benefits concentrated; costs concentrated
C. Bureaucratic contingency	one-time can be solved at the top technically simple discretion can be reduced	long-term requires field-level penetration technically complex discretion required
D. Judicial Remedy	preventive injunction court can impose solution order readily monitored (e.g., monetary damages)	regulatory or structural injunction matter has to be referred back to agency damages order complex or involving large numbers
E. Structure of Law Reformers	affiliated with parent groups have available technical resources have available political resources	independent, foundation-supported lack technical resources lack political resources

minorities, the enjoyment of civil rights, jobs, and so forth. These are specific, tangible outcomes that, for the most part, can be identified and measured.

To accomplish these results, two steps are required: First, new norms must be established or existing ones revalidated; second, the norms must somehow be implemented in the field. There are many examples of enacted laws that produce no change; these laws must (except for symbolic rewards, which we shall discuss shortly) be regarded as unsuccessful.

It is unrealistic to expect complete "victories" in political efforts. Compromise, uneven administration, gradual changes are far more common. Take, for example, the food stamp program. In dollar terms, the program has expanded enormously over the years, resulting in massive distributions of goods to the poor. Yet, many potential eligibles, for one reason or another, do not receive benefits, and there are numerous problems of inequities and maladministration. What can we say about the "success" of those who fought for the program? Have they accomplished their goals or not? The growth in the program (particularly during antiwelfare administration) counts as success; the potential eligibles who do not receive food stamps count as example of failure.

Social reform groups do not always seek actual redistribution of goods and services. They may be interested in symbolic rewards.[23] The distinction between symbolic and tangible rewards is subtle, especially since actual redistributions carry with them symbolic rewards as well. The enactment of public programs and changes in laws and administrative rules legitimate aspirations and values as well as (sometimes) redistributing goods and services. But there can be occasions when groups are interested in symbolic rewards only. Symbols may be important in and of themselves. Or, the group

may have no hope of implementing the symbolic victory. Finally, the group may think that the symbolic victory will lead to a change in the distribution of goods and services; for example, groups will push for the enactment of a law or court decision, hoping that some further action will follow. The victory will be considered "half a loaf."

In the real world, purely symbolic rewards are rare. There is always some enforcement, or some effect on behavior. Ralph Nader succeeded in getting passed a Highway Safety Act over the opposition of the automobile industry. If we view Nader's objective as the enforcement of the law, then mere passage was not a victory; in fact, it might have been a defeat if it lulled his supporters into thinking they had won. On the other hand, enforcement of this single piece of legislation may be too narrow a test by which to judge Nader's success. If we view his efforts as part of a long-term, broad campaign to raise the nation's consciousness about consumerism and the environment, then lack of enforcement of one piece of legislation is not that crucial. The enactment of legislation--the legitimization of values and aspirations--may be important in the long run. Success or failure is a matter of degree and not based upon the "either-or" concept. In many instances success or failure are clear; in others they will be harder to assess.

A final point about "success": As previously mentioned, social reform groups rarely achieve results in isolation from other events,or by themselves. Major changes are brought about by critical social events, by political entrepreneurs, or by widespread changes in public opinion that occur over long periods of time. Social reform groups catalyze and assist in these processes. Social reform groups and law reformers are only one set of actors in the complex process of social change but their precise role is often impossible to ascertain with any degree of precision.

Part III. Case Studies

Up to now we have tried to establish a framework for a systematic analysis of social reform group legal activity. We turn now to some illustrations. The case studies have been selected from four principal areas of law reform activity--environmental litigation, consumer issues, civil rights, and welfare. Within the principal areas, each case study is designed to illustrate a different type of social reform legal activity. Thus, we can examine our analytic framework in terms of a broad range of actual law reform cases.

A. Environmental Litigation

The theory that regulatory agencies had become "captives" of industry helped to stimulate environmental litigation. It suggests that litigation was necessary to open up the decision-making process and to gain a hearing for environmentalist or consumer points of view. Regulatory agencies would be more likely to reach decisions that reflected environment or consumer interests if such interests could only be heard. In one of the first important cases, Scenic Hudson Preservation Commission v. Federal Power Commission,[24] the court held that the Federal Power Commission must take into account environmental and aesthetic considerations in decisions on the sites of power plants. The agency must grant those who have a special interest in these matters (i.e., environmental groups) an opportunity to be heard. In that case, the court did not say which way the agency must decide on the merits. As long as the agency considered all points of view fairly, the agency was free to abide by its original position. And in fact, this was more or less what happened in the Scenic Hudson case. The environmentalists presented their evidence to the agency; the agency considered the evidence, rejected much of

it, and authorized construction of the power plant, with certain modifications.

The social reform groups in Scenic Hudson did not prevail in the long run; but they won an important principle. The National Environmental Policy Act (NEPA), and corresponding state legislation, has extended this principle to many areas of regulation that affect the environment. Regulatory agencies may not proceed without taking environmental factors into account. Under NEPA, federal agencies must prepare statements about the impact of proposed action on the environment. At first, many agencies claimed that NEPA did not apply to their actions; others did not take the Act seriously and filed superficial impact statements. These agencies ran into trouble, and the environmentalists won many cases in court. Highways, urban renewal projects, and a great variety of projects that affected wilderness areas and conservation (e.g., dams, roads, exploitation of mineral and lumber rights, etc.) were halted for failure to comply with NEPA.[25] One of the most famous cases involved the proposed construction of the Trans-Alaskan Pipeline; social reform groups and a public interest law firm halted construction of the pipeline. These decisions came as great shocks to government and the business world. Environmental groups, and their public interest lawyers, were using litigation apparently to great advantage.

The initial decisions under NEPA were procedural only; there remained the problem of implementation. How should the new interests take advantage of the opportunity to be heard? Many of the substantive issues in environmental disputes are extraordinarily complex. The industry has the technical resources to present its side. Social reform groups like the Sierra Club, the Wilderness Society, and the Friends of the Earth, are membership organizations and rely upon volunteers as their experts. Group members who are engineers and scientists

donate a few evenings a week, or a day or two on a weekend. The groups could not easily finance extensive NEPA lawsuits without help from subsidized public interest law firms.

The great cost of gathering information needed in major cases can be illustrated by the Trans-Alaskan Pipeline dispute. The first litigation stopped construction completely. The Department of Interior and the industry then took NEPA seriously, and drafted a comprehensive impact statement. Many design features of the pipeline plan were altered to lessen environmental damage and risks. Construction was finally authorized by an Act of Congress. The new construction plans were sounder from an environmental standpoint than were the original plans; hence, the environmentalists had had a substantial impact. But whether or not this victory will prove hollow depends on how the construction actually proceeds. The environmental impact statement was only the first step in achieving social change. Throughout the controversy, the Department of Interior was unsympathetic to the environmentalists. The energy crisis brought enormous pressure to modify the impact statement to save costs and time. Environmental groups are strong or rich enough to supervise the actual construction of the pipeline. There are reports that as time went on environmental considerations lessened.

In the pipeline situation, the characteristics of the social reform groups did not favor successful action. The groups were large with either a mass or a nonexistent membership. Presumably, as to some of the environmental matters, benefits could be considered selective in the sense that they would be enjoyed, in fact, only by an elite few. This would be true, for example, of certain parts of the Alaskan wilderness. But generally speaking, environmental amenities are collective goods and the small amount of selective goods would not be sufficient to overcome the free rider problem.

Environmental groups are largely purposive organizations. The leaders would not be able to furnish the resources to provide the collective goods for their members and the society at large.

Distributional effects do not favor successful social reform group activity. The benefits are distributed--environmental amenities--and the costs are concentrated on the oil companies and contractors. In environmental suits against utilities or industries that have monopoly-like characteristics, environmentally-imposed costs will eventually be passed on to the consumer, and thus, costs will be distributed. However, in the short run, the costs are concentrated on the industry. Development is delayed, and there are transaction costs in the mechanics of obtaining price increases and passing them along. There are also the bureaucratic or internal costs to the organizations--which perceive themselves as being forced to do something that they disagree with. They disagree with the value positions of their opponents, and they regard the attacks as infringements on management judgment. These, too, are costs that are concentrated.

The bureaucratic contingency is not favorable to successful action. Although an environmental impact statement is made at the top and specifies how development is to proceed; in fact, these are long-term construction plans that are not only technically complex but also require careful monitoring at the field level. In addition to technical complexity and longevity, decisions are made at lower levels of the bureaucracy.

The most serious problem with the judicial remedies sought was the court's reluctance to substitute its judgment for that of the agency on the substantive issue. Courts will send back an environmental impact statement because it does not pay enough attention to certain points of view; they

can even do this on more than one occasion, but it will be the rare court, indeed, that will decide the substantive issue. These are matters the law has handed over to agency discretion.

The fact that in most situations social reform groups will ultimately find themselves returning to agencies for these discretionary long-term decisions means that the administrative or bureaucratic contingencies become very critical. A recalcitrant agency is hard to cope with; if the courts are only willing to grant an ineffective remedy, the odds on success for reform groups do not improve very much. Sometimes, of course, delay is itself a great victory. Procedural victories and the ability to go back to court again and again may give reform groups great leverage, and may even kill a project altogether.[26] Undoubtedly, this leverage was present in the Trans-Alaskan Pipeline litigation and ultimately produced a better impact statement. But, in order for procedural tactics to have much effect, courts have to order preliminary injunctions, and they are not always willing to do this.

Characteristics of the law reformers did not favor successful action. There were two great weaknesses of the law reformers in the Trans-Alaskan Pipeline case. The case ultimately went to Congress where on a vice-presidential tie-breaking vote, the oil companies won. The first weakness was that when the case entered the political arena, the law reformers lacked sufficient political resources. By law, they are prohibited from lobbying. This is an important, but not a crucial, limitation. However, the oil companies and the contractor still had to follow the revised impact statement. The second weakness was that the law reformers (and their clients) lacked the technical, professional, and financial resources to follow-up and see that the impact statement was being

implemented. A continuous input of technical resources was needed over a long period of time. The subsidized law firms were able to overcome the free rider problem, but only for the initial stages of the controversy.

A contrasting example is the Calvert Cliffs Park case. In that case, Columbia Liquid Gas Company purchased land on Chesapeake Bay that had been designated as an addition to the Calvert Cliffs State Park, but not yet purchased by the State of Maryland. Columbia obtained a license from the Federal Power Commission to build a mile-long pier for unloading liquefied natural gas from tankers and a plant to regasify it for pipeline transport. After threats of litigation by environmental groups, Columbia and other participants in the transaction agreed to substitute a more expensive tunnel for the obtrusive pier, move its plant back away from the shoreline and a fresh-water marsh, and dedicate a large part of its site to the State in the form of scenic easements and parkland. In sum, the adverse effects of this facility upon the adjacent park and shoreline were drastically reduced.

Calvert Cliffs stands in sharp contrast for the Trans-Alaskan Pipeline. The Calvert Cliffs case was technically complex, but it was not long and drawn out. Essentially, there was to be one crucial decision: a tunnel for a pier, a different site, and the dedication of part of the site. Suppose, however, that the problems, in addition to being technically complex, were also long and drawn out? How successful, then, would the social reform group have been in using litigation? In addition, Columbia agreed to a settlement. Suppose Columbia really dug in and resisted court orders as long as it could? Would judicial remedies have been effective? Finally, this case did not involve lower-level bureaucracy. The crucial decisions were made at the top and field-level implementation and monitoring were not

issues. Because Calvert Cliffs did not involve a lengthy working out of the problem or lower-level implementation, it is probably not typical. Most law reform activity on behalf of social reform groups involves one or more of these complications.

B. Consumer Issues

We will consider two contrasting cases--one dealing with the Federal Trade Commission, and other involving Wisconsin usury laws. (1) As a result of a petition from various consumer groups, the FTC instituted a new procedure requiring all major companies to provide the agency with documented support for claims made in their advertisements.[27] The Commission started by asking substantiation from manufacturers of automobiles, electric razors, air conditioners, toothpaste, and head cold remedies. (2) Consumer groups in Wisconsin successfully challenged the rate of interest charged by major retailers on revolving charge accounts as a violation of the state usury laws. The court order had two parts: one ordered the stores to lower their finance charges to what the court held was allowed under the Wisconsin usury law; the other ordered the stores to refund the excess charges to customers who could prove that they had been overcharged. The major retail stores then sought an amendment to the usury laws, but as the price of this change, the consumers were able to extract from the legislature a consumer protection statute. Prior to the court decision, the consumer groups had lackedthe strength to push their bill through the legislature, but they did have enough strength to prevent the amendment to the usury laws. The court decision gave them the necessary leverage. We will analyze three aspects

of the Wisconsin usury law-reform activity--the two separate parts of the court order, and the use of the litigation as a bargaining device in the political arena.

Characteristics of the social reform groups do not favor successful activity. Consumer organizations are either mass membership or paper organizations. Incentives are primarily purposive; material incentives are present, but usually of a minimal nature. For example, in the Wisconsin usury case, the leaders of the consumer groups knew about the availability of refunds; their interest in informing all other consumers would not benefit the leaders; rather, it was purposive or in the hope that consumers who were informed, would be grateful and join the organization. Lowering the finance charges was probably even more remotely related to strengthening the organization; the vast majority of consumers would simply notice (presumably) the lower charge and have no idea what caused it. A similar analysis applies to the FTC. If the agency decision was implemented, then more truthful advertisements would appear. It is probably the case that the leaders of the organization already are aware of a good many of the distortions in advertising and would not benefit that much from the new ads; and, the general public would in most cases not be aware of who was responsible for the changes, assuming they detected any changes. In both situations, then, we have leaders operating under purposive incentives for mass or nonexistent membership organizations.

The distribution of benefits and costs did not favor successful activity. The benefits are widely dispersed and the costs are concentrated. In all of the situations, the goods were collective; they could be enjoyed by anyone

without making any contribution to the production of the goods. This applies to truth in advertising, lowered finance charges, knowledge about the availability of a refund, and increased consumer protection in the form of legislation. Thus, all of the groups face the free rider problem. At least in the short run, costs are concentrated on the manufacturers and the retail stores; they have strong economic incentives to resist.

The bureaucratic contingency is not favorable to successful activity in the FTC example. The problem that immediately developed was that the manufacturers began swamping the agency with paper and the agency experienced difficulties in keeping up. And, of course, this kind of administrative decisionmaking presents problems for the social reform groups. They would have to have huge resources to evaluate independently the evidence submitted by the manufacturers. The bureaucratic problems, then, are not only technically complex, but also long-term.

The effects of the bureaucratic problem in the Wisconsin usury example are more variable. One part of the court order ordered the stores to lower their finance charges to comply with Wisconsin law. The bureacratic contingency here was favorable to successful action. The decision would be made at the top level of management. There would be no discretion at any level of the bureaucracy--decisions would be routinized, field-level personnel would play no role, and monitoring would be simple.

Another part of the order authorized customer refunds. This presented great problems for the consumer groups; they had to notify and explain the court decision to a widely dispersed group of people. Then, each individual had to decide whether it was worth the bother to try to get the refund. Each application for a refund involved field-level decisionmaking, and although the decisions were capable of speedy solution (documentary evidence

and arithmetic calculations), there was the potential for field-level delays and other forms of obstruction. Thus, consumer groups confronted masses of citizen and lower-level bureaucrats over a long period of time, and (unless closely monitored) discretionary decisions.

The usury lawsuit was also used, as we noted, as a strategic weapon to increase leverage in a political struggle for a consumer protection bill. Because of the lawsuit, the large retail stores had to agree to a consumer protection law as the price for favorable amendments to the usury law. When lawsuits are used for this purpose--leverage--there is, of course, no problem of implementation as such.

Judicial remedies yield to a similar analysis. In the FTC example, there was no court order, but if there had been, the order would have referred the matter back to the agency in the form of a regulatory injunction and the agency would have been ordered to start evaluating the scientific validity of advertising claims. In our example, the agency was willing to comply (they initiated the program) but implementation would have been hopeless. A willing agency was struggling to keep up with its own program; a recalcitrant agency would find all sorts of reasons to drag its feet.

The judicial remedies were, in one regard, effective in the Wisconsin usury case -- ordering the lowering of the finance charges to pay money--and thus capable of being monitored. These successful enforcement prospects also increased the value of the order as leverage for favorable legislation.

With regard to refunds, the remedy was less effective, the order was to pay money damages and was susceptible to quantification. However, it required field-level decisions and consumer initiative in quantity. For reasons already stated, judicial remedies of this type are not usually effective.

The ordinary public interest law firm (independent, foundation-supported) would not be well-suited in its characteristics in the FTC case. Implementation

requires technical resources and monitoring. These law firms lack the resources and the inclination for such work. On the other hand, the lawyers in this case had as clients, large, well-organized consumer groups. These groups had technical resources to monitor the agency and they presumably understood the value of monitoring. The extent to which the organizations would be willing and able to commit resources to this work depends upon their internal priorities. For reasons discussed already, the organizations will have difficulty; and to the extent, that they have limited resources for this work, then the characteristics of the law reformers will not be favorable to successful action. The law reformers cannot implement this kind of an order on their own.

The characteristics of the law reformers were suitable, however, for the Wisconsin usury litigation. This was an ordinary litigation. The amount of technical skill required was within the grasp of competent lawyers. It was high-visibility litigation admirably serving the publicity needs of the lawyers. The lawyers themselves could monitor that aspect of enforcement that related to future interest charges. Implementing the refund part was an entirely different matter. Enforcement is not technically complex, but law reformers would find a multitude of refund cases boring and wasteful.

Implementing the leverage function of the order requires political resources. Whether or not the law reformers could do this would depend on the applicability of the lobbying prohibition, the kind of lobbying called for, and how much resources were needed. If the lawyers could legally lobby (or otherwise avoid the prohibition), the lobbying activity required was open and relatively short-term, and a great many resources were not required, so the characteristics of law reformers would not be unfavorable. Many lawyers by training have enough lobbying skills. On

the other hand, if a hard, long fight was still called for, requiring extensive political mobilization, then the burden would fall on the consumer groups, or if long-term, patient, behind-the-scenes lobbying was required, then the characteristics of the law reformers would not be that helpful; they would have performed their role in getting the favorable court ruling.

C. Civil Rights

In the civil rights area, we will use as our examples the Montgomery Bus Boycott, school desegregation in the South, and the history of voting rights legislation and administration.[28]

In the Montgomery bus boycott (1955-1956), the goal of the Reverend Martin Luther King, Jr.'s organization was to induce the city council to repeal an ordinance which required segregation on buses. The boycott tactic had a number of advantages for blacks. It was not illegal; thus, the leaders and participants could not be legally arrested. It avoided confrontation, important because any confrontation in the deep South at this time would have meant brutal repression. At the same time, the black leaders displayed moderation and self-discipline, helpful in attracting outside support. The disadvantage of the boycott was that the city council was under no real pressure to yield until the city began to feel the economic impact of the revenue loss. For a long time there was a stalemate. The matter was finally resolved by a lawsuit in which the court declared the ordinance unconstitutional. The leaders used litigation to sidetrack more militant members of the group. The court decision legitimated the position of Reverend King and was valuable publicity in the North. The city lost, but it could save face by blaming the courts. The litigation allowed both sides to avoid escalating the conflict.

In the school desegregation controversy, the basic decision Brown v. Board of Education (1954), was the culmination of many years of efforts by the NAACP to attack segregation through the courts. The importance of this case for black civil rights leaders could not be overestimated. They considered it "a visible sign. . . that the white establishment and the federal government were supporting the legal road to changing their subordinate position." According to author Louis Lomax, many blacks were confident that victory for an integrated society had come. They felt that the white establishment of the South, while not in favor of integration, would insist on law and order, and not be bullied and cowed into submission by poor whites, fanatics, and mobs. It was anticipated that local school boards would voluntarily obey the Supreme Court.

The white supremacists also felt that the decision was of momentous importance. According to Anthony Lewis, "Any breakdown in school segregation necessarily endangered the perpetuation of the southern myth that the Negro is by nature culturally distinct and inferior. And there was the fear--surely felt deeply by many in the South, however others regarded it--that school integration was a step toward racial intermarriage." Mississippi's Senator James Eastland said, "The people of the South will never accept this monstrous decision. I predict this decision will bring a century of litigation."

Desegregation began to occur almost immediately in the border areas of the country, and by 1956, several hundred school districts integrated voluntarily. Then the tide turned. The Southern Manifesto of 1956, signed by 101 U.S. Senators and Congressmen, called the Brown decision a "clear abuse of judicial power."

Southern states started their campaigns of massive resistance, and violent resistance movements spread rapidly throughout the South. Southern whites were a determined, substantial minority in the nation as a whole, and a militant majority in their home states. Opposition to Brown took two forms: (1) Social and economic pressure, violence, and mob action would intimidate blacks and moderate whites; (2) massive legal battles would also be mounted. Every school district would litigate. Every other move toward desegregation would be resisted in court. The Southerners hoped that eventually public opinion would turn against the Court, and the decision either would be reversed or would lapse for lack of enforcement. At this time, the North was relatively indifferent to civil rights and the federal government, under President Eisenhower, was equivocating in its support of the Supreme Court.

The legislative components of the massive resistance strategy took a variety of forms. Initially, laws provided for withdrawing state funds from any school district that adopted desegregation plans; closing such schools; repealing compulsory education laws; providing tuition grants for private schools, cutting off salaries of teachers in desegregated schools; and preventing school boards from borrowing from their usual commercial sources. As these laws were declared invalid, more subtle techniques were adopted, such as pupil placement laws. These laws--which did not mention race--allowed local officials to assign pupils to schools on the basis of various criteria. In fact, the assignments were used to perpetuate desegregation. Black students who objected faced a maze of administrative hurdles, followed by difficult court battles. School boards also adopted plans assigning students to schools on the basis of geographic zones. Determining whether the lines of any particular plan were gerrymandered to preserve segregation presented questions difficult

to litigate, especially if blacks had the burden of proof. Where desegregation plans were adopted, school boards fought in court as long as possible.

By 1961, the U.S. Civil Rights Commission reported that desegregation was proceeding only when ordered by courts. Moreover, the cases were hard fought, long, and complicated. In the typical public school case, seven years would elapse between the start of the litigation and actual admission of black children to schools. Author Charles Silberman reported that ten years after the Brown decision two of the four school districts in the original case had still not admitted a single black student. In ten states of the Deep South, less than six-tenths of one percent of all black students were in desegregated schools. Writing in 1963, Louis Lomax reported that it took seven years of effort to get only seven percent of the black children in the South into desegregated schools.

Segregation in public schools was not the only issue. The federal courts invalidated segregation laws for many other public facilities; the follow-up here also required litigation, when communities refused to comply voluntarily. The NAACP and other civil rights organizations did not have the resources to challenge this kind of massive resistance on a comprehensive basis. Even after years of struggle, some communities did not have a single desegregated facility, and in others, desegregation was minimal (e.g., a few lunch counters only). In Montgomery itself, after the boycott was over, white violence increased, juries refused to convict whites for acts of violence against blacks, and the city passed several new segregation ordinances. Martin Luther King's organization lacked the resources to challenge these laws. Silberman reports that seven years after the court ordered integration

of the buses, most blacks "had returned to the old custom of riding in the back of the bus."

By 1961, blacks had grown impatient and frustrated with the strategy of integration through court order. This approach was time consuming, costly, and seemed to produce little in the way of results. Attention then turned to nonviolent, direct action techniques. The Student Non-Violent Coordinating Committee (SNCC), formed out of a nucleus of activist students, worked to desegregate facilities through direct action. They also began voter registration projects in the Deep South. The workers met with political harassment, violence, arrests, and slowdowns at registrars' offices. After the passage of the Civil Rights Act of 1964, SNCC tried to build a political organization outside of the regular Mississippi Democratic Party. But the democratic party convention refused to seat SNCC's delegates. SNCC decided that national politics were unreliable and that blacks must organize their own local political base. But this too was difficult. A black-organized party in Lowndes County, Alabama, after a year and one-half of dangerous grass roots political activity, failed to gain the 20 percent of the electorate needed for legal recognition--in a county that was 81 percent black. Blacks were too intimidated by harrassment, violence, and other forms of pressure to register and vote for their own party. Other voter registration drives met with bitter resistance, too. Blacks faced intransigent voting registrars, corrupt and brutal law enforcement personnel, and in many instances, prejudiced judges. Finally, SNCC turned northward and inward, toward a policy of black nationalism and separatism; nonviolence as a strategy was abandoned.

During the next half decade, however, black registration in the South began to grow. The principal reason for this change was the Voting Rights Act of 1965. Under that law, federal registrars replaced southern state

and local officials whenever and wherever registration of blacks fell below a certain proportion of the population. In many areas of the country, federal registrars were appointed to register blacks and, in other places, state and local registrars realized that their strategy of intransigence would result in the loss of their jobs. The Voting Rights Act of 1965 was successful, then, not only because the federal government stiffened its attitude, but also because it eliminated, as a stumbling block, lower-level officials with power to make discretionary decisions.

Characteristics of the social reform groups. There is debate about the characteristics of some of the social reform groups that have been active in these examples. It is claimed, for example, that the NAACP is a strongly hierarchical organization and, indeed, was quite out of touch with its mass membership in the southern desegregation campaign.[30] Southern teachers feared career losses in integrated schools; integrated education for their children was not a high priority goal for rural blacks. The NAACP was led by full-time staff; thus, in McCarthy and Zald's terms, keeping the campaign going and attracting outside support provided selective incentives to the leadership. This analysis of the NAACP structure and motivation is hotly contested. In any event, it was a funded social movement in that regardless of the nature of the benefits to the leaders and the membership, the organization could not have carried out its task without heavy infusion of outside support. Even if benefits were selective to the leaders, the leaders could not pay the cost of obtaining the goods. The same analysis would apply to the Southern Christian Leadership Conference.

A similar analysis would apply to the voter registration drives. Increasing the franchise is a collective good; but there were strong selective incentives for the political leaders. All political parties are funded social

movements in that they rely on major contributors. These contributors may or may not be contributing beneficiaries in the McCarthy-Zald sense. That is, some would be contributing for noneconomic reasons; others, no doubt, contribute to obtain selective benefits. In any event, for the groups that we are discussing--lower-class blacks--the leaders did not have the resources to pay the cost of their selective benefits, and, in this situation, outside contributors would be the McCarthy-Zald contributing beneficiaries. The money, by and large, came from white, northern, and liberal sources. Eventually, the federal government supported southern blacks; this support would gain selective benefits to the federal officeholders.

In sum, the characteristics of these groups were on the whole, unfavorable to social reform group activity. The groups were large with a mass or paper membership. There were selective incentives for the leadership; probably more so than with the consumer or environmental groups previously discussed. Black organizations, as political organizations, had a mixture of incentives. Selective incentives would provide some strength for the organization, but probably not enough. These groups, basically were funded social movements, relying on heavy infusions of support from elites and contributing beneficiaries.

The distribution of benefits and costs. In the civil rights examples given, benefits were widely distributed. Access to schools and other facilities, front seats on a bus, and exercising the franchise were collective goods; all of the groups faced the free rider problem. Analysis of the distribution of costs is more complicated. In the long run, the costs of these efforts are widely distributed. Whites must share facilities and political power with blacks. But the short-run costs were concentrated. Local politicians would lose office if they did not resist black demands. The situation is analogous

to the consumer cases; in the long run, the costs are probably passed on to all consumers, but in the short run, costs were concentrated in the companies.

The bureaucratic contingency. The civil rights cases presented the bureaucratic problem in severe form. The bureaucracies are decentralized; implementation required field-level penetration of discretionary decisions extending over a long period of time. As these three examples illustrate, implementation required enormous staying power on the part of the social reform groups.

Faced with this kind of problem, the social reform groups must try to enlist additional outside resources and press for the reduction of field-level discretion so that enforecement can be more readily monitored. This happened to some degree in school desegregation, but was more apparent in voting. The federal government eventually was persuaded to put a variety of resources on the side of the blacks. Courts, in school desgregation, began to insist on quotas as the test of legality of discretionary plans. In voting, discretion was eventually removed from local registrars; if that did not work, then the registrars would be removed as well. Both solutions--quotas and routinized voting qualifications--lessen the unfavorable bureaucratic contingency by greatly reducing field-level discretion and subjecting administrative behavior to statistical monitoring.

Customary judicial remedies proved unsatisfactory. Initially the court orders required affirmative behavior on the part of officials and relied on complaining clients to monitor enforcement. When orders were not enforced, the courts were required to take extraordinary measures; in many instances, substituting judicial decisions for administrative decisions to implement school desegregation plans. In voting, legislative rules took over for administrative decision-making. Both situations are important illustrations of what is needed, but both are unusual in that court and legislative rules rarely assume these characteristics.

The Montgomery Bus Boycott was a different situation. Martin Luther King, Jr. never had any illusions concerning the ability of court orders to bring about desegregation; his tactic was direct action. The court order was used for other, limited purposes--to save face and provide an out for both sides, to cool militants, to gain publicity and legitimacy. For these goals, the court decision served its purposes. In this respect, the litigation resembled one of the results of the litigation in the Wisconsin usury situation--the court order by itself was sufficient for leverage purposes.

In all three examples, the characteristics of the law reformers were suitable and valuable only for litigation efforts, not for other campaign tactics. Thus, in Montgomery, the main tactic was direct action; in the voting campaigns, political action at the local and national levels. Law reformers have no special skills for these tasks. The desegregation battles continued through the courts. Here, it was a problem of resources. The social reform groups lacked the lawyering resources to fight all of these battles.

D. Welfare

The special benefit campaigns of the National Welfare Rights Organization, NWRO, (particularly in New York City),[31] and litigation to raise welfare benefits in California,[32] provide us with two examples of welfare litigation.

The idea of the NWRO grew out of the experience of a store-front service agency in New York City, Mobilization for Youth (MFY). As poor people began to come into MFY for help, it was discovered that many people were eligible for welfare but not enrolled, or were on welfare but did not receive what they were entitled to. The MFY staff rapidly became skilled in aggressive advocacy on behalf of their clients. At this time, under welfare, recipients were legally

entitled to a variety of benefits in addition to their basic allowance. For example, it was New York City policy to allow an extra benefit of close to $150 per family of four for winter clothing. In fact, however, these extra benefits were rarely granted. Most recipients did not know about them; if they did and requested the benefits, welfare caseworkers either refused the requests or gave less than the prescribed amounts.

MFY handled a number of special grant request cases, then decided to bargain with the welfare department on behalf of groups of welfare recipients. At this time, there was a great deal of unrest in the urban ghettoes. The organization backed up its demand with mass demonstrations, and demands for administrative hearings as required by federal law. In the first confrontation, the New York City welfare department gave in. Shortly thereafter, hundreds of families received checks for winter clothing. Naturally, word spread rapidly. Within six months, thousands of welfare families joined the campaign for extra benefits. This was the start of the welfare rights organizations. At the height of the campaigns, NWRO workers would station themselves outside of welfare centers with checklists of various benefits that recipients were entitled to. When recipients came into the outer office, they were asked to check the items they had not received. Then, they went in to see the welfare caseworkers and demanded the items. If they were refused, the NWRO worker went back in with them to help present their case. If the demand was still refused, requests for hearings were filed; lawyers were available for this purpose. These campaigns were backed up by marches, demonstrations, sit-ins, conventions, platforms, and lobbying. In New York City, at least, the campaigns were very effective. For example, in June 1967, special grants in New York City were close to $3 million; in June, one year later, they had reached $13 million.

Although NWRO was interested in immediately increasing benefits for its members, and attracting new members, this was not its major goal. Its effort was part of a larger strategy to reform the welfare system. The strategy, developed by Professor Richard A. Cloward, a founder of MFY, and Frances Fox Piven, and adopted by NWRO, envisioned a massive drive to recruit all the eligible poor to demand the maximum benefits to which they were legally entitled. This, it was hoped, would disrupt state and local welfare agencies, create a fiscal crisis, and force the federal government to take over welfare and reform it.

Eventually, welfare agencies struck back in two ways. First, they eliminated special grants. At a stroke of the pen, NWRO was robbed of its principal organizing tool and its power to create a fiscal crisis. Welfare departments also resisted at administrative hearings, by delay, or simply by continuing to deny requests after hearings. Welfare organizations lacked the resources to pursue judicial remedies on a massive scale.

The California welfare litigation, although long, drawn out, and complicated, can be summarized quickly for our purposes. Congress amended the Aid to Families with Dependent Children program to require states to increase need standards and maximum grants to reflect changes in the cost of living. Although there was considerable controversy over what the amendments meant exactly, and what they required the various states to do, there was no doubt about their applicability to California. Under the law, California was required to raise welfare grants. Nevertheless, California welfare officials refused to implement the law. A class action lawsuit was filed by law reformers on behalf of welfare recipients. HEW, after some prodding, also began proceedings against the state. The controversy was bitterly fought on both sides, in state and federal forums. Finally, after almost two years of

litigation and the threat of a cut-off of federal funds, California capitulated and increased welfare benefits.

Characteristics of social reform groups were unfavorable to successful action. The welfare recipient groups had large, inert memberships. The groups were weak and unstable. As the NWRO example illustrates, they recruited mostly through material incentives, but the organizers had difficulty maintaining these incentives. When special grants were sharply reduced, welfare rights organizations withered.

Distribution of benefits and costs. Benefits are collective goods. NWRO consciously made the decision that all could utilize their advocacy services to obtain special benefits; there was only the hope, but not the requirement, that beneficiaries would then join the organization. In California, the social reform group sought statewide increases in benefit levels--a pure collective good. Ultimately, increased welfare costs are distributed and in the long run, the distribution of costs would be favorable to successful social reform group activity. In the short run, however, welfare officials and politicians deem it to their bureaucratic or political interest to view the demands as costs. Therefore, costs are concentrated. This was clearly the case in California under the Reagan Administration when this litigation took place.

The bureaucratic contingency. In California once the bureaucracy gave up, the rule change could be implemented at the top; it did not require lower-level decisionmaking, but only a recomputation of welfare grants by computer. The NWRO example was different. Here, the bureaucratic contingency did not favor successful social action. Even when welfare recipients were entitled to

special benefits, the benefits were not granted automatically; recipients had to request and justify them; lower-level officials had to be persuaded that the special benefits were due. Thus, compliance required implementation by lower-level officials, dealing with a welfare population; decisions were discretionary and had low visibility. Furthermore, although each particular special benefit was discrete, the issue--even as it applied to a single welfare family--was long term. Special needs arise all the time. Even if an official complies with the rules in a particular instance, there is no guarantee that compliance will be forthcoming the next time around. Finally, there is the problem of compliance for those recipients who are not members of the organization, or who have not sought out the legal advocacy assistance, or, who for other reasons are unaware of their rights. NWRO, it will be recalled, did not purport to restrict its activities only to members; it tried to seek benefits for all welfare recipients, and, in the process, to force a more general change in the welfare system. Thus, in order for the law reformers to be successful, implementation at the field level had to occur. Money had to be paid out.

The judicial remedy worked in the California case; the court ordered the state to increase benefits according to an easily ascertainable statutory formula. In the NWRO case, courts would not order special grants except in unusual circumstances; even then, the decision would only apply to the particular parties before the court. In class actions, or even routine cases of judicial review, the court would remand to the agency, and ask the agency to exercise its discretion under different criteria. Thus, in most situations, the parties would be forced to confront field-level officials.

The characteristics of the law reformers was favorable in the California example. This is one of the clearest cases where the subsidized law reformers can overcome the free rider problem. There was no way that the group could

have supported this lengthy appellate court litigation by itself. Yet it was exactly the type of litigation most suited to law reformers.

The NWRO case presented a different situation. The usual type of law reformer was not likely to have the skills that the group needed. Litigation skills were needed far less than advocacy and negotiation at the field level and community organizations work with welfare recipients. In fact, for a time, law reformers (OEO Legal Services lawyers) worked successfully in the NWRO campaigns. These were unusual lawyers more interested in community work than in appellate court litigation.

Part IV. Summary and Implications for Law Reform Activity on Behalf of Social Reform Groups

Our theory predicts that law reform activity on behalf of social reform groups is less likely to be successful when the following characteristics are present: (1) the groups are large with material or purposive incentives; (2) benefits are distributed and costs are concentrated; (3) the bureaucratic contingency is technically complex, long term, or requires lower-level implementation; (4) judicial remedies are regulatory or structural injunctions, or defer to agency discretion; and (5) the law reformers are biased toward litigation and lack technical and political resources.

A great deal of law reform work on behalf of social reform groups shares these unfavorable characteristics. The principal example that we used was the Trans-Alaskan Pipeline controversy, but much environmental activity would fall into this category--energy policies, the regulation of forests and other natural resources, and the various water programs of the Corps of Engineers.

Much consumer activity also shares these characteristics, particularly product safety issues which are technical and hard fought.

Another major situation where law reform litigation is likely to be less than wholly successful is in the mass justice cases. School desegregation, the NWRO special benefit campaigns, the Wisconsin usury refunds are all examples. Similar problems arise in employment discrimination, health care, patient rights in institutions, the criminal justice system, schools. The social reform groups, as above, are large with mass or paper memberships; incentives are both purposive and material; benefits are collective and costs are concentrated (in the short run). The bureaucratic contingency is usually not technically complex, but implementation involves an extraordinary amount of lower-level discretionary decisions. Judicial remedies are regulatory or structural and courts almost invariably deter to administrative discretion. The law reformers are biased in the direction of litigation and their slender resources fail in the implementation stage.

Law reform activity is more successful if the outcome is capable of routinization; the monitoring problem is much lighter. The bureaucratic contingencies of complexity, lower-level implementation, and discretion are avoided. A preventive injunction or an order capable of quantification shifts the judicial remedy from unfavorable to favorable. The litigation bias of the law reformers then becomes an asset; and the slender resources are no longer obstacles. There can be routinization of result even in a technically complex decision; our example was Calvert Cliffs. The site was moved; a pipe was substituted for a pier; and land was dedicated. Routinization also can occur in mass justice situations,--voting rights, the Wisconsin usury order for future changes, and the California Welfare Department controversy.

Because bureaucratic contingencies and enforcement difficulties are ordinarily so severe in mass justice situations, pressure develops for routinization in the form of quotas, goals, time-tables, and so forth. In the mass justice situations that we discussed, the other characteristics were unfavorable to social reform group activity. The groups were large or nonexistent; with material or purposive incentives; the benefits were collective and costs were concentrated (in the short run). Subsidized law reformers were essential to overcome the free rider problem, especially in the welfare case. But because a routinized solution could be obtained, the law reformers were successful.

Even where litigation fails as a tactic in accomplishing goals, the subsidized law firms can still play a role. The social reform groups are similar to McCarthy-Zald's social funded movements; they are large, with mass or paper memberships and are subject to the free rider problem. Purposive incentives provide some organizational strength. The law reformers are outside resources supplied by elites. This helps overcome the free rider problem and gains other advantages for the group such as publicity and legitimacy, which help the groups attract outside support. Perhaps one of the most important functions of litigation is to buy time so that the group can try to mobilize other resources. In addition to publicity, fund-raising, and legitimacy, we noted that litigation can be used as leverage in political bargaining (Wisconsin usury) or to save face and cool down passions (Montgomery bus boycott). In these examples, litigation is one of a number of tactics: it is only part of a campaign. Dispite some unfavorable factors--the groups are large with purposive incentives; benefits are collective; bureaucratic change requires lower-level implementation over a long period of time--law

reform activity can succeed in achieving limited objectives, where enforcement is not an issue.

Often too, in real-life situations, the disadvantages of social reform groups are neutralized by alliances with groups that lack these disadvantages--they are small, with selective incentives, and benefits are concentrated. At the present time, an environmental lawsuit is challenging a Corps of Engineers project dealing with lock and dam construction on the Mississippi River. This is an enormous, technically complex extending over many years. Litigation would be prohibitive for the social reform groups and their lawyers. Joining with them, however, is the railroad industry, which opposes improving conditions for barge transportation. The railroads are typical of the interests that usually oppose environmental groups; they are a small organization, with selective economic incentives, and they do not suffer from the free rider problem.

Forming alliances to change the effects of the characteristics of the groups and the distribution of benefits and costs returns us to one of James Q. Wilson's major points: social reform groups cannot do it alone; they can only work with, encourage, and push along other more powerful forces in the processes of social change. Law reform activity on behalf of social reform groups is political activity. In several kinds of situations and in a variety of ways, social reform groups have been able to use law reformers to improve their position in the political struggle. The importance of these efforts has varied; some were clearly not minor, but, on the other hand, the law reform activity was successful only when special circumstances were present. In general, law reform is not a sufficiently

powerful instrument to alter significantly the lineup of political forces; rather, the legal system usually reflects and perpetuates the existing balance of power. Because most social reform groups, for the reasons discussed, labor under significant deficits, the use of law reformers must be selective. When certain combinations of characteristics are present, then certain kinds of success are more likely and other kinds less likely. Different combinations of characteristics change the likelihood of other kinds of outcomes. Or, to state the matter in the reverse, if certain kinds of success are required, then social reform groups and law reformers have to put together certain kinds of combinations. For example, if resources are slender and judicial remedies difficult to implement, then law suits should be used for publicity, legitimacy, and leverage; if alliances can be formed with special interest groups, then implementation capabilities are improved.

We pointed out in discussing problems of defining and measuring success, that one of the principal ways in which social change comes about is through the gradual change in public opinion and in the perception of values. Has there been a change in public opinion concerning social reform group causes and have law reformers contributed to that change? In many respects this is both the most important and most difficult question to answer. Whatever the precise or direct effects of Brown v. Bd. of Education and other Supreme Court opinions, there seems little dispute over the fact that the character and quality of the national debate over civil rights has changed. The change took a long time, and we cannot pinpoint the precise contribution of the civil rights litigation, but intuitively it is felt that there is a causal relation. Today, the climate of opinion is also different from a decade ago concerning environmental, consumer, minority, and other social reform causes.

As one Congressman put it, "Nobody makes sneering remarks about Common Cause anymore, at least not in public. They may in the cloakrooms."[33] How significant is the change in public opinion? Will it lead to social change? And what was the contribution of law reformers? As with civil rights, we can observe a steady change in the climate of public opinion; we can note particular legislative and judicial victories as well as defeat; we can feel confident that law reformers have made a contribution to this process--but how much is as yet unanswerable in any precise manner.

NOTES

[1]347 U. S. 483 (1945).

[2]Clement Vose, Constitutional Change (1972; Robert McCloskey, The Modern Supreme Court (1972).

[3]For a description of the growth of the various kinds of law reformers, see J. Handler, Hollingsworth, and Erlanger, Lawyers and the Pursuit of Justice, Ch. 2 (forthcoming). See Morlis James, The People's Lawyers (1973) Introduction; Philip C. Kazanijian, "Preparing for the Law: A Look at the New Breed," 17 Student Law Journal, No. 7 (April 1972); Wendy Moonan and Tom Goldstein, "The New Lawyer" in The New Professionals (1972); Peter Vanderwicken, "The Angry Young Lawyers," Fortune, September, 1971.

[4]For a more complete description of law reformers and especially the new public interest lawyers, see Handler, Hollingsworth and Erlanger, supra, ch. 4; Weisbrod, Handler, and Komesar, Public Interest Law: A Social and Economic Analysis, chs. 4, 5 (Berkeley, Cal.: University of California Press, forthcoming); Robert Rabin, "Lawyers for Social Change: Perspectives on Public Interest Law," 28 Stanford L. Rev. 207 (1976); for a discussion of the tactics, including litigation, used by social reform groups in one community, see Kenneth E. McNeil, Citizens as Brokers: Cooptation in an Urban Setting (unpublished Ph.D. dissertation, 1973, Vanderbilt University).

[5]Theodore J. Lowi, The Politics of Disorder (1971); William E. Connolly, (ed.), The Bias of Pluralism (1969).

[6]Quoted in Handler, Hollingsworth, and Erlanger, supra, ch. 2.

[7]Mancur Olson, Jr., The Logic of Collective Action--Public Goods and the Theory of Groups (1965).

[8]Even for small groups, Olson argues that collective goods will not be supplied at an optimal level, because the members of the group will not provide enough of the good to satisfy their common interests. This happens because the individual member who pays for a collective good gets only part of the benefit and will therefore discontinue paying before the optimal amount of the good is reached for all of the members. And, the larger the group, the more likely it is that the optimal amount will not be reached.

[9]Olson stresses throughout that his subject is economic organizations. He thinks that his theory would apply as long as rational individuals are interested in common goals. He does not think the theory is useful in describing religious or philanthropic groups, nor does he think the theory useful with groups "with a low degree of rationality--that is, working for lost causes."

[10]John D. McCarthy and Mayer N. Zald, The Trend of Social Movements in America: Professionalization and Resource Mobilization (1973).

[11]James Q. Wilson, Political Organizations (1973).

[12]In addition to sources in note 5 supra, see Theodore Lowi, The End of Liberalism (1969).

[13]See, for example, U. S. Civil Rights Commission, 1963 Staff Report, Public Education, December 1963, pp. 1-57; U. S. Civil Rights Commission, Education, Vol. 11, 1961, pp. 177-78.

[14]See James Q. Wilson, Political Organizations (1973).

[15]See David Mechanic, Administrative Science Quarterly.

[16]E.g., see Greene v. McElroy, 360 U. S. 474 (1959); Thorpe v. Housing Authority of Durham, 393 U. S. 268 (1969); Shelton v. Tucker, 364 U. S. 479 (1960); Goldberg v. Kelly, 397 U. S. 254 (1970).

[17]See, e.g., Edwards v. South Carolina, 372 U. S. 229 (1963); NAACP v. Alabama, 357 U. S. 449 (1958); N. Y. Times v. Sullivan, 376 U. S. 254 (1964); see Richard Stewart, "The Reformation of American Administrative Law," 88 Harv. L. Rev., No. 8 (1975).

[18]Not always; sometimes factions within agencies welcome pressure by social reform groups and court orders; it gives them strength to overcome internal or external opposition to change. But this is not the usual situation.

[19]See Donald W. Large, "Is Anybody Listening? The Problem of Access in Environmental Litigation," 1972 Wis. L. Rev. 62.

[20]See J. Handler, "Controlling Official Behavior in Welfare Administration," in Jacobus tenBroek, The Law of the Poor (1966).

[21]See Note, "The Wyatt Case: Implementation of a Judicial Decree Ordering Institutional Change," 84 Yale L. J. 1338 (1975).

[22]See sources, note 4 supra.

[23]See Joseph R. Gusfield, Symbolic Crusade: Status Politics and the American Temperance Movement (1963); Murray Edelman, The Symbolic Uses of Politics (1964).

[24]354 F. 2d 608 (2d Cir. 1965), cert. denied, 384 U. S. 941 (1966).

[25]For a discussion of the National Environment Policy Act and its subsequent enforcement, see symposium in Natural Resources Journal, Vol. 16, April 1976.

[26]An example is the cancellation of plans to construct a three million kilowatt generating plant in southern Utah. Consortium spokesman blamed the conservationists for delays which raised costs. See N. Y. Times, April 15, 1976, p. 1, col. 1.

[27]See Richard Leone, "Public Interest Advocacy and the Regulatory Process," The Annals, Vol. 400 (March 1972), pp. 46-47, 52.

[28]For a discussion of the Montgomery bus boycott, see Anthony Oberschall, Social Conflict and Social Movements (1973), pp. 126-27; 267-68. See sources cited note 13 supra; Louis E. Lomax, The Negro Revolt (1971), pp. 83-86; Anthony Lewis and the New York Times, Portrait of a Decade (1964), p. 5.

[29]See L. McCarthy and R. Stevenson, "The Voting Rights Act of 1965: An Evaluation," Harvard Civil Rights Law Review, Spring, 1968; U. S. Commission on Civil Rights Reports, 1959, 1961, 1965, 1971.

[30]See Louis E. Lomax, The Negro Revolt (1971), pp. 83-86.

[31]The data on the National Welfare Rights Organization are from the following sources: Frances Fox Piven and Richard H. Cloward, Regulating the Poor (1971); Cloward and Piven, "A Strategy to End Poverty," The Nation, May 2, 1966; Cloward and Elwan, "Advocacy in the Ghetto," Transaction, December 1966; NOW, National Welfare Rights Bulletin, Feb. 9, 1968; Robert Nelson gathered much data from newspaper accounts in New York City, Boston, and Newark as well as personal interviews with welfare rights leaders and legal services lawyers. There is a vast literature in legal periodicals dealing with welfare rights.

[32]See Richard Leone, "Public Interest Advocacy and the Regulatory Process," The Annals, Vol. 400 (March 1972), pp. 46-47, 52.

[33]See Congressional Quarterly Weekly Report, May 3, 1975, pp. 939-940, quoted in L. Friedman and S. Macaulay, Sociology of Law (2d edition forthcoming).